

G-008/GR-93-1090 ORDER MAKING PRELIMINARY DETERMINATION OF
INELIGIBILITY FOR INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Minnegasco, a Division of Arkla, Inc., for
Authority to Increase Its Rates for Natural Gas
Service in the State of Minnesota

ISSUE DATE: May 19, 1994

DOCKET NO. G-008/GR-93-1090

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DETERMINATION OF INELIGIBILITY FOR
INTERVENOR COMPENSATION

PROCEDURAL HISTORY

The Minnesota Alliance for Fair Competition (MAC) is a nonprofit trade organization of plumbing, electrical and appliance associations.

In a number of proceedings before the Commission, MAC has questioned Minnegasco's trade practices. In 1991 MAC initiated a complaint proceeding in which it alleged that Minnegasco subsidizes its nonregulated appliance sales and service operations through its regulated utility operations, offers preferential treatment to ratepayers who use its appliance sales and service operations, and uses its appliance inspection service to manipulate ratepayers into purchasing appliances from Minnegasco. Docket No. G-008/C-91-942 (the Complaint Docket).

On November 10, 1992, the Commission issued its ORDER ESTABLISHING ACCOUNTING PROCEDURES AND REQUIRING FURTHER FILINGS in the Complaint Docket. In that Order the Commission required Minnegasco to adopt cost allocation principles developed by the Federal Communications Commission.

On November 5, 1993, Minnegasco filed a petition seeking a general rate increase in the above-captioned docket. Minnegasco's filing was formally accepted on January 26, 1994, in the Commission's ORDER ACCEPTING FILING AND SUSPENDING RATES.

On March 24, 1994, the Commission issued its ORDER APPROVING COST ALLOCATION METHODS AND LEAK SURVEY PLAN WITH MODIFICATIONS, REQUIRING REPORT, FINDING VALUE IN GOOD WILL, AND DEFERRING VALUATION TO RATE CASE in the Complaint Docket. In that Order the Commission approved Minnegasco's new cost allocation methods with modifications. Consideration of the implementation of the new methods would take place in Minnegasco's next rate case.

In its March 24 Order the Commission also defined "good will" as "the value of the utility's name, reputation, and image." The Commission found that there is value to Minnegasco's good will as used by its nonregulated appliance sales and service affiliate. The Commission deferred the actual quantification of the value of good will to the Company's next rate case.

On March 28, 1994, the Administrative Law Judge (ALJ) presiding over Minnegasco's general rate case hearings granted MAC's petition to intervene in the rate case.

On April 5, 1994, MAC filed a request for intervenor compensation for its participation in the rate case. MAC asked the Commission to make a preliminary determination on eligibility for compensation pursuant to Minn. Rules, part 7831.0500.

On April 20, 1994, Minnegasco filed a response to MAC's request for intervenor compensation. Minnegasco asked the Commission to make a preliminary determination against MAC.

MAC's request for intervenor compensation came before the Commission on May 12, 1994.

FINDINGS AND CONCLUSIONS

I. The Intervenor Compensation Rules, Minn. Rules, Parts 7831.0100 Through 7831.0800

Minn. Rules, part 7831.0300 requires that applicants for compensation awards shall file a request for compensation at least 75 days after notice of a filing or 30 days before the beginning of evidentiary hearings, whichever occurs later. The request must contain basic information regarding the applicant, proof of insufficient financial resources, a budget, and a statement of participation in the proceeding.

Minn. Rules, part 7831.0500 requires the Commission to issue a preliminary determination of compensation eligibility within 45 days of the filing of the request. The Commission must address the status of the applicant as an intervenor and the applicant's showing of insufficient resources. The Commission may preliminarily determine the applicant's material assistance to the proceeding and such other factors as duplication of positions or presentations.

Minn. Rules, part 7831.0500, subpart 3 provides that a preliminary determination will not guarantee either a grant or a denial of compensation award. A preliminary determination will, however, have an effect on the applicant's request. If the preliminary determination is to grant intervenor costs, a rebuttable presumption of an eventual award is raised. If the preliminary determination is to deny intervenor costs, the applicant may still elect to intervene in the proceedings. In its eventual claim for compensation, however, the applicant must overcome a presumption that the award will be denied.

II. The MAC Filing and Minnegasco Response

In its statement of participation MAC stated that its rate case focus would be on the reasonableness of Minnegasco's cost separations and the appropriate attribution of revenue from Minnegasco's good will. At the Commission's May 12, 1994 meeting MAC's representative stated that the organization's sole purpose for rate case intervention was to pursue the issue of good will.

In its request for compensation MAC provided a listing of actual revenues and expenses for 1993 and part of 1994, as well as a projection of revenues and expenses for 1994. MAC also provided a budget showing estimated costs of rate case participation.

Minnegasco asserted that MAC did not meet the rule standards for a preliminary determination of compensation eligibility. Minnegasco stated that issues regarding cost allocations had been resolved by previous Commission Orders. Since the Department of Public Service would participate in the rate case on the issue of good will, MAC's contribution on that matter would be redundant. Minnegasco stated that MAC's position as a competitor meant that its intervention would serve its own interests, not necessarily those of the general public; Minnegasco ratepayers

should therefore not be required to pay MAC's costs. Finally, Minnegasco asserted that MAC had failed to show that it is financially unable to participate in the rate case, absent an award of intervenor compensation.

III. Commission Action

A. Timeliness of the Filing

MAC submitted its request for intervenor compensation more than 30 days prior to the beginning of rate case evidentiary hearings. MAC therefore filed its request in a timely fashion under the rules.

B. Intervenor Status

The Commission finds that MAC is an intervenor under Minn. Rules, part 7831.0100, subpart 10, which defines intervenor as: "a person who is entitled or permitted by law, or permitted under rule of the commission or by order of the presiding officer, to intervene in a proceeding." Since the ALJ presiding over the Minnegasco rate case granted MAC its request to intervene, the applicant comes under the definition of intervenor.

C. Sufficiency of Financial Resources

1. MAC's Financial Filing

After determining intervenor status, the Commission must make a finding on the sufficiency of the applicant's financial resources in the preliminary determination. Minn. Rules, part 7831.0500, subpart 1(B) states that the determination must address:

whether the applicant has made a sufficient showing that, but for an award of compensation for all or part of its intervenor costs, it has insufficient financial resources to intervene and participate fully and effectively in the proceeding, assuming all information in the request filing is true and accurate pending an audit that may be required under part 7831.0700, and pending a decision awarding or denying compensation under part 7831.0800.

In its request filing, MAC stated that its sole revenue source is member contribution consisting of dues and assessments. MAC stated that its only 1994 expenses would be outstanding costs from the Complaint Docket and expenses of rate case participation. MAC's revenues would be used exclusively for these expenses.

MAC provided a brief, confidential table of actual revenues and expenses for 1993 and projected revenues and expenses for 1994. The information showed, and MAC's representative confirmed at the Commission meeting, a drop in revenues of approximately \$30,000 from 1993 to 1994. When projected 1994 revenues were compared with accounts payable projected through 12/31/94, the table showed a significant deficit for MAC in 1994.

MAC did not provide any explanation for the substantial revenue decline in 1994. MAC's presentation was also unclear regarding the assessment duties and relationship between MAC as an umbrella organization and its member trade associations.

2. Commission Finding

The Commission finds that MAC did not make the necessary showing of insufficient financial

resources to be granted a preliminary determination of compensation eligibility. MAC's filing left open important questions regarding the sharp drop in revenue in 1994, and resulting accumulated shortfall. It also failed to provide sufficient information regarding the assessment methods and history. Overall, the financial filing did not provide sufficient information regarding MAC's financial activities in 1994.

MAC is a nonprofit organization of trade associations of for-profit businesses. This structure makes it particularly essential that MAC make a clear, well-documented showing of financial need for intervenor compensation. MAC failed to meet its burden of showing insufficient financial resources for effective intervention.

Although the Commission makes a preliminary determination of noneligibility for compensation, the rules allow MAC to continue to participate in the rate case proceedings. The rules also allow MAC to file more detailed financial information with the Commission at any time, and to submit a claim for compensation at the close of the rate case. If MAC chooses to submit such a claim, the Commission will give it full consideration.

ORDER

1. The Commission makes a preliminary determination denying intervenor compensation for MAC's costs of participation in the Minnegasco general rate case.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)